



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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March 4, 2016

Mr. Norman Fish
4480 East County Road 250 East
Bainbridge, Indiana 46105

Re: Formal Complaint 16-FC-09; Alleged Violation of the Access to Public Records Act by the North Putnam High School (Amended)

Dear Mr. Fish:

This advisory opinion is in response to your formal complaint alleging the North Putnam High School ("School") and Mr. Daniel Noel, Superintendent violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The School has responded to your complaint via Superintendent Noel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 14, 2016. This opinion has been amended.¹

BACKGROUND

Your complaint dated January 13, 2016 alleges the North Putnam High School violated the Access to Public Records Act by improperly denying your request.

On or around January 3, 2016, you requested a copy of the list of individuals interviewed by the Superintendent regarding your coaching record from 2004-2012. Mr. Noel presented the 2012 list to you at that time. You then requested the list again and did not receive the documents. On an undisclosed date, you were told all of your personnel records were in the Athletic Department. On January 12, 2016, you visited the Athletic Office to view your evaluations and were told your personnel files were in the Superintendent's Office. At that point, you proceeded to the Superintendent's Office for the original interview list and to retrieve your personnel records. At that time, Mr. Noel indicated to you that he does not possess and is unaware of the list you referenced. You were instructed to fill out a request for disclosure of public records, but to date you have not completed the required form utilized by the North Putnam School Corporation to obtain the records you are seeking.

¹ On March 2, 2016 after the original publication of this opinion, Superintendent Noel submitted a requested narrative response to this office, which prompted this amended opinion.

On January 29, 2016 the School submitted its initial response with documentation; however, this response did not address the allegations in a concise manner in order to extrapolate necessary facts to draft an opinion. On February 9, 2016 the School submitted a second response. However, the School did not address the allegations in the complaint and merely provided various documents and a timeline of the situation. On March 2, 2016 the School submitted an additional response. In its final response, the School stated your original request was not submitted on the proper document request form and provided a narrative response to the allegations. It should be noted, the School has stated in response to your complaint, it has sent you two (2) copies of the records requested; one via certified mail which was not accepted and one via first-class mail.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The North Putnam High School is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

Personnel records are typically subject to discretionary release under Ind. Code § 5-14- 3-4(b)(8). However, the provision also states “all personnel file information shall be made available to the affected employee or the employee’s representative.” Therefore, you are entitled to a copy of any of your personnel records you seek. The School has stated it has provided responsive documents. Therefore, it has met its obligations under the APRA. Additionally, the School has met its obligation under the APRA by making the documents available to you, regardless of whether you have indeed signed for the documents or read your mail.

The reason for your denial appears to be the fact you refused to complete the request form provided by the School. Under Ind. Code § 5-14-3-3(a)(2), a public agency such as the School may mandate that a document request must be submitted in writing. Requiring a written submission is not considered a denial by the School. After several allegedly heated visits to the School with regard to your demands for your records and being made aware you must complete a document request form in order to obtain those records, you then returned to the School accompanied by a Deputy Sheriff and were again explained the document request procedure and provided the School’s request form to complete, which you failed to do. Therefore, due to the fact the School properly informed you on multiple occasions the form must be completed and regardless of the fact you chose not to complete the document request form, it is my opinion the School has not violated the APRA.

I must note the complicated nature of the School’s response to this Office’s proceeding by including timelines and extraneous materials through which to sift. Pursuant to Ind. Code § 5-14-5-5, a public agency shall cooperate with the Public Access Counselor in any investigation or proceeding. The Office of the Public Access Counselor advised the School a general response to our office should be presented in a concise *written* statement of the facts of the situation, which the School provided on March 2, 2016 upon request. Additional supporting documentation is welcome, but should not be submitted in lieu of

the overall written statement of review. It was a miscommunication in the response expectation which led to the delay in publication. Therefore, the original opinion has been amended.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the North Putnam Community School Corporation has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Daniel Noel, Superintendent